



Water Rights vs. Rights to Water:

Reflections on Zimbabwe's Water Reforms From a Human Rights Perspective

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I. INTRODUCTION

Many governments in Southern Africa are currently reforming their water laws and policies. In so doing, they are responding to perceptions of growing water scarcity and to processes of economic and political change having to do with structural adjustment, market liberalization and governance. To date - with the notable exception of resettlement associated with the construction of large dams - human rights discourses have not figured largely in these reforms. In this presentation, we'll briefly consider whether a right to water is recognized in existing international human rights and environmental covenants. Are states obligated to provide citizens with access to fresh water to meet their basic needs? Do the new water law and policy statements in Zimbabwe and South Africa incorporate these rights, and if so, in what ways? What might be some of the advantages of applying a human rights perspective to water reform?

The control of water has long been central to anthropological understandings of human sociopolitical and economic systems. Karl Wittfogel, Julian Steward and many others have focused on the relationship between the control and availability of water and the nature of the social system. The reforms in Southern Africa are part of the long-standing human enterprise to control and manage water - a mission which has complex and unforeseen social and ecological consequences. As Scudder (1999: 16) points out, the ecosystem itself has needs for, and some would argue, rights to water. Thus these systems, of which people and their cultures are only one component, must also be managed, restored and enhanced.

The Southern African water reforms are being carried out in an ideological climate in which water is regarded as a scarce resource that must be managed by market mechanisms. We argue that it is important to counter the supposed universality of such an analysis (and its related policy prescriptions) with alternate perspectives consistent with other traditions in anthropology. In this presentation, we explore "water as a human right," as a means of linking our empirical and theoretical concerns with the numerous justice issues that water reform raises in Southern Africa.

II. WATER AS A HUMAN RIGHT

Water is perhaps the most basic resource: “It is essential for life, crucial for relieving poverty, hunger and disease and critical for economic development” (UN Department of Technical Cooperation for Development n.d) It also is one of the most vital issues facing future human use of the environment. Climate change, deforestation, protection of biodiversity and desertification, are all linked to water resource management. Unless used equitably and efficiently, water could become the most serious limiting factor to socioeconomic development within states and a potent source of conflict among them (CDC 1997). Already today, the Commission on Sustainable Development (CDC 1997) estimates that as many as one third of the world’s population live in countries suffering moderate to severe water stress. By the year 2025 two thirds of the world could find themselves in similar circumstances.

Given its centrality to life, what legal frameworks exist for treating the right to water as a human right? Here, we will briefly examine three inter-related rights discourses: 1) basic/universal human rights texts, 2) the African inspired **Right to Development** and the UNDP 1998 statement on **Human Rights and Sustainable Development** and, 3) recent environmental proclamations and agreements focusing on water.

RIGHTS TO WATER IN BASIC HUMAN RIGHTS ACCORDS:

McCaffrey (1992) provides one of the clearest reviews of the human rights texts. He notes that the only universal human rights document which explicitly discusses a right to water is the **Convention on the Rights of the Child** (1990) where provision of adequate nutritious foods and clean drinking water are specifically identified as responsibilities of signatory states. Water is not directly mentioned in the 1966 UN covenants on human rights or in the **Universal Declaration of Human Rights**, and thus, if there is a right to water under international human rights law, it must be inferred (McCaffrey 1992:7).

Nonetheless a strong case can be made for such an argument. In particular, Article VI of the **Covenant on Civil and Political Rights** states that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” This provision has recently been interpreted as obliging states not only to protect citizens from arbitrary deprivation of life but also to adopt positive measures by pursuing policies that guarantee access to the means of survival, an interpretation which would include rights to water:

Thus, this modern view would interpret the right to life broadly, so that it ‘comprises the right of every human being not to be deprived of his life (right to life) and the right of every human being to have the appropriate means of subsistence and a decent standard for life (preservation of life, right of living)’” (McCaffrey1999:0).

Article 11 of the **Covenant on Economic, Social and Cultural Rights** also provides a basis for recognizing rights to water as basic human rights. It provides that parties “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” McCaffrey (1992:15) makes a strong argument for using the concept of “due diligence” as a means of assuring that governments attach a high priority to meeting basic human needs..

RIGHTS TO WATER IN DEVELOPMENT DISCOURSES:

Perhaps more than other states, African nations have used the United Nations **Declaration on the Right to Development** as a basis for thinking about human rights.¹ It is conceptually linked to the **African Charter on Human and Peoples' Rights** adopted in 1981 and it fits with the need for poverty alleviation recognized by most African government and peoples.

In the document, development is conceptualized as a process of constant "improvement" incorporating economic, social, and cultural dimensions within a human rights framework. Thus, satisfaction of basic human needs for water and food are regarded as rights in this document. Within this broad context, the right to development is accorded the stature of an inalienable human right, without which other rights cannot be realized. This perspective is reflected in **The Rights Way to Development** published by the Human Rights Council of Australia:

...development and human rights are not two separate spheres, that human rights are not simply one program component alongside others in the development process, but rather that development is a subset of human rights. Moreover, the right to development [underlining in original] and the economic, social and cultural rights have universal legitimacy and this has very practical implications for action by both donor and recipient governments. (1999: 22).

This framework is noteworthy because it does not radically separate the rights of the individual from broader social, economic and cultural rights, nor does it place all burdens of commitment on the state to meet these rights.

Increasingly, the United Nations Development Programme (UNDP), the World Bank, the OECD and governments are integrating rights discourses into their development agendas.² One of the more challenging arenas of research and action concerns the means by which development institutions themselves may be held accountable to human rights accords. For example, should (or how could) the IMF and the World Bank be held accountable for the drastic declines in standards of living and health which have taken place in countries undergoing strict structural adjustment programs? How will these large-scale institutions come to terms with alternative development paths in an era of market hegemony promoted by their policies?

While the **Declaration on the Right to Development** was a product of the late 1970s and early 1980s, the right to development took on a new shape in the late 1980s and 1990s. This reflected a global effort to relate development, human rights and the environment.

Integrating Human Rights with Sustainable Human Development published in 1998 by the UNDP exemplifies this orientation. Like **The Right to Development**, this text is convincing in demonstrating that human rights are multidimensional (social, economic, cultural and political), interrelated and interdependent (UNDP 1998:7). Further, the environment appears as a full and equal concern to be interrelated with human rights and development discourses and integrated into all UNDP programs.

¹ This is perhaps the most contested of the rights promoted in international treaties, covenants and agreements. The right to development emerged from a discourse which is no longer current - that of a new international economic order (NIEO). For a full treatment see Chowdhury, Denter and de Waart 1992.

² Reflecting these trends, the Norwegian Minister for Development is now called the Minister for Overseas Development and Human Rights

RIGHTS TO WATER IN ENVIRONMENTAL DECLARATIONS AND COVENANTS:

Environmental declarations are another source of recognition of the right to water as a human right, as well as of the obligations of states to manage this resource so that their citizens' right to water is insured. Statements to this effect are found in the 1972 **Stockholm Declaration on the Human Environment** (Principal 2), and in the 1992 UNCED **Agenda 21**, both of which reflect a focus on sustainable development. For example, Provision 18.2 of **Agenda 21** states:

Water is needed in all aspects of life. The general objective is to make certain that adequate supplies of water of good quality are maintained for the entire population of this planet, while preserving the hydrological, biological and chemical functions of ecosystems, adapting human activities within the capacity limits of nature and combating vectors of water-related diseases...

A number of water-specific declarations linking human rights discourses with developmental and environmental ones also exist. For example, the International Conference on Water and the Environment, held in Dublin, Ireland in January 1992 issued the **Dublin Statement on Water and Sustainable Development**. This document laid the groundwork for, and reflects the thinking on, freshwater resources found in Chapter 18 in **Agenda 21**.³ The Dublin conference identified four guiding principles for action at the local, national and international levels: 1) Fresh water is a finite and vulnerable resource, essential to sustain life, development and the environment; 2) Water development and management should be based on a participatory approach, involving users, planners and policymakers at all levels; 3) Women play a central role in the provision, management and safeguarding of water; and 4) Water has an economic value in all its competing uses and should be recognized as an economic good.

While decidedly anthropocentric, environmental declarations like the **Dublin Principals** and Chapter 18 of **Agenda 21** also recognize that the environment itself has basic needs which must be respected if human life and well-being are to be sustained. This is reflected in the above quote from Provision 18.2 of **Agenda 21**.

This brief review of international human rights covenants and environmental proclamations suggests that there is a strong case to be made for the right to water as a basic human right. The overview also indicates that considerable latitude exists for interpreting and applying this right depending on the source document. The **Universal Declaration of Human Rights** and the **Covenant on Economic, Social and Cultural Rights** (and to a lesser extent the **Right to Development**), emphasize states' obligations to protect basic human rights and, in a derived way to meet basic human needs.

Sustainable development and environment proclamations, on the other hand, often situate human rights to water in a development/economic growth context and emphasize reconciling human needs with long-term ecological sustainability. The **Dublin Principals** and Chapter 18 in **Agenda 21** call for governments and other organizations to adopt specific policies. Although presented as globally applicable, these reflect current neoliberal political and economic agendas rather than universal principals. They involve removal of subsidies, privatization and commodification of resources, and decentralization of management

³ The Dublin conference was attended by 500 participants including government representatives from 100 countries and representatives of 80 international, intergovernmental and non-governmental organization.

structures. Thus, tensions exist between different rights-based discourses concerning water - particularly those resting on basic human rights orientations and those informed by sustainable development and economic growth agendas.

III. WATER REFORM IN ZIMBABWE AND SOUTH AFRICA

In many ways, the new water laws in Zimbabwe and South Africa reflect these tensions. They also reveal a conjoining of principals proclaimed in human rights covenants and environmental proclamations on the one hand, and specific national contexts and histories on the other. In this vein, Hellum (1999:97) emphasizes context, history and contestation in attempting to find the difficult balance between universality and diversity in human rights doctrines. Falk Moore likewise draws attention to the need to analyze the sub-text of two discourses: those that emphasize what 'should be' and those that consider 'what is'. In the latter, rights are contested, understandings differ, lineage and gender matter and the implementation of abstract rights will be limited (1999: 44)

In this section, we examine 1) how rights to water figure in Zimbabwe's and South Africa's new water laws and policies, and 2) some of the emerging tensions that exist between these provisions and actual practices and power relations related to the reform processes in the two countries.

WATER REFORM IN SOUTHERN AFRICA: NEW LAWS AND POLICIES:

South Africa published its white paper on water policy in 1997, and in 1999 enacted a new water law following a large number of public hearings and input. A simultaneous and independent process took place in Zimbabwe where the Water Resources Management Strategy Group (WRMS) was formed to forge new water management policies and legislation together with the Department of Water Development. Following consultations at the Provincial level during the mid-1990s, a draft water bill was circulated, and revised ten days before being voted upon by Parliament in 1998.⁴ In this presentation, we will focus principally on the Zimbabwean rather than South African context.

The new water law in Zimbabwe reflects both the human rights discourse and the sustainable development orientation described above. It also contains some of the tensions and contradictions between the two approaches.

BASIC HUMAN RIGHTS TO WATER IN ZIMBABWE'S NEW WATER ACT AND POLICY:

In many ways, Zimbabwe's new water law is a progressive document which recognizes water as a basic human right. The law states that primary use of water ("basic needs" in South Africa) takes precedence over all other uses. In essence, this is tantamount to saying that human uses of water for primary purposes are a fundamental right since no human being should go without water, whether or not he or she can pay for it. The new Zimbabwean law goes beyond the provision of clean drinking water to recognize other primary uses, including watering of domestic livestock, brick-making for homes and watering small-scale gardens. In short, activities that are necessary for human social reproduction and are non-commercial in nature are classified as priority rights.

⁴ The law still is not promulgated because ZINWA is not fully staffed and operational.

These strong rights-based statements contrast with the weaker, more conditional ones expressed, for example, in the **Dublin Principals**. Principal 4 of this document recognizes water as a right but ties access to proper economic valuation and pricing:

Within this principle it is vital to recognize first the basic right of all human beings to have access to clean water and sanitation at an affordable price. Past failure to recognize the economic value of water has led to wasteful and environmentally damaging uses of the resource (1992).

The water laws and policy statements in Zimbabwe and South Africa also seek to redress long standing social inequities in access to water, particularly racial and class ones. The law aims to increase marginalized groups' - especially black communal and resettlement area farmers' - access to water. Most water rights in rural areas, where 69% of the population lives, are held by a small group of commercial farmers who control 85% of the irrigated land.⁵ Farmers in communal areas and resettlement schemes, in contrast, have access to approximately 6% of irrigated land in formal irrigation schemes, and have few, if any, recognized water rights.

The new water law specifically addresses this disparity in two ways. First, it alters property rights to water. Under the 1976 and previous laws, water rights were granted on a first-come, first-serve basis and were held in perpetuity. Most rights holders were white commercial farmers who were organized into River Boards as the major stakeholders.⁶ Under the new legislation, ownership of all water resources is vested in the state (actually the President himself). Water will be allocated using a permit system, the permit being held for twenty years. The new law thus aims to do away with rights in perpetuity, and to increase poor black communal and resettlement area farmers' access.

Second, the new bill replaces the River Boards with Catchment Councils.⁷ Zimbabwe has been divided into seven catchments, each of which will be run by a separate Catchment Council. Two pilot Catchment Councils (the Mazowe and Mupfure) were established in 1997 and the remainder were initiated in 1999. Councils will be composed of representatives of all major stakeholder groups, not solely large-scale commercial farmers. These include representatives of small-scale and communal farmers, large- and small-scale miners, and urban users. In addition, representatives from government ministries and departments concerned with water will also be invited to participate in Council deliberations. Thus, in theory at least, the perspectives of more water user sectors will be present in management.

Catchment Councils and Sub-Councils will have responsibilities for water resource planning and management in their areas. These organizations will draw up management plans, issue water permits, monitor water use and pollution and enforce regulations. They will be assisted in these duties by ZINWA - the newly established Zimbabwe National Water Authority - which is to be operated along semi-commercial lines. ZINWA will appoint and pay for a river manager for each Catchment who will work closely with the Catchment Council and who will be responsible for the day-to-day management of the catchment authority.

⁵ Commercial farmers control an estimated 130,000 has of the 152,000 irrigated has. in the country while communal area and resettlement farmers control only 8,882 has of irrigated land.

⁶ For most of the colonial period and until the early 1990s, communal area farmers could not obtain water rights on their own, but had to do so through their local unit of governance.

⁷ Catchment is the British/Zimbabwean term for what in the US is termed a watershed. What in American English is catchment Zimbabweans use watershed. In short, a catchment/watershed is all of the drainage for a river system.

The new law and policy statement seek to correct racial and class inequities in access to water and its management, but they do not take the same firm position on gender inequalities. Although the law does not directly address gender issues, the policy statement does, but in a manner that contrasts markedly with its position on class and racial biases. Gender is raised as an issue toward the end of the document (in a section entitled A2.3 Elements of the National Water Resources Policy", Sections f and g) where it is noted that the position of women in the consultation process has to be carefully considered, and that a failure to provide adequate opportunities for their equal participation in water management bodies will compromise the long-term objectives of the plan.

While earlier parts of the policy document call attention to racial and class inequities and conflict over water, the gender section stresses partnership and cooperation between men and women. In this way, the document downplays the widely documented conflicts of interest over water in Zimbabwe, and it assumes that the privileging of class and race is the principal injustice to be remedied by the new legislation (Jackson 1993, Cleaver 1994, Cleaver and Elson 1995, Zwarteveen 1995). This attitude reflects current trends in women's rights in Zimbabwe. For example, the recent widely publicized Magaya vs Magaya decision by the Supreme Court has called into question women's majority status and their rights to inherit property.

DEVELOPMENT DISCOURSES IN ZIMBABWE'S NEW WATER ACT AND POLICY:

Although the new water law and policy contain language centering on primary use which suggests that water is a basic human right, these documents also draw on sustainable development and economic growth discourses which are laden with neoliberal economic and political thinking. Potential areas of contradiction and conflict with basic rights approaches thus exist.

Perhaps the most obvious is the strong focus on removing subsidies and instituting pricing and other regulatory measures to limit the demand for water and to channel its use to the most "productive" economic sectors. Another area of concern centers on equity issues in representation on Catchment Councils and other new management entities. The potential impacts of these and other proposed measures on women and the poor have been explored in other African contexts (Green and Baden 1994, Cleaver and Elson 1995, Zwarteveen 1997). While the 1980s UN International Drinking Water and Sanitation Decade called attention to women's centrality in water supply and management at the community level, the current focus on management of watersheds and rivers, and the concentration on the "productive" uses of water may undermine their authority. Perhaps the best way to illustrate these potential equity impacts is to consider emerging debates and practices taking place at Catchment Council meetings.

PRACTICE DIMENSIONS OF THE ZIMBABWEAN REFORM PROCESS:

In most of Zimbabwe, implementation of the new reforms is just getting underway. What we are describing then is a fluid and rapidly changing situation, open to considerable negotiation. The issues which have dominated discussions in the Mazowe and Mupfure Catchment Councils, where reforms have been underway since 1997, are predominantly those of the

large-scale commercial farmers (both black and white). The water-related concerns of poor rural and urban residents have received far less attention.

This bias is reflected in the topics of debate at the Mazowe and Mupfure Catchment Councils which center on the following issues:

- 1) What type of permit system should replace the previous system where water was allocated on a first-come, first-serve basis and rights were held in perpetuity? Commercial farmers strongly argue for long-term leases to protect their existing investments in dams and boreholes and to encourage further growth and investment. They charge that the proposed twenty-year lease is not sufficient to promote the necessary private investment in infrastructure.
- 2) Who will be responsible for seeing that each individual receives his/her water allocation, and that some people are not receiving more than their share of water? In case of violations, who can be sued? In the past, the River Boards and the Water Court acted to oversee compliance. This surveillance function is now being transferred to the Catchment Councils and the ZINWA-appointed River Managers, but exact procedures and lines of authority have yet to be determined.
- 3) In water short years, what system of allocation should replace the priority date system? The Mazowe Catchment Council has proposed a proportional system in which each person or company would take their percentage of water from the flow every year in good and bad times. In good times, however, they would be allowed to store more water than they were allocated, if they had sufficient storage capacity.
- 4) How should representation be organized on the Catchment and Sub-Catchment Councils? Should it be by stakeholder group as defined by the Department of Water Development and the Water Management Strategy Group (WRMS) or should it be through election of water users?
- 5) Should there be a third tier of management - a unit below the Catchment and Sub-Catchment levels? The pilot Mupfure scheme has Ward Water User Associations and the Mazowe has Water User Boards which permits greater local participation. However, the new law does not recognize this level of management authority.⁸
- 6) How exactly should water used for "productive" purposes be priced? Government owns a series of dams from which it has traditionally sold water at a subsidized price. In addition, ZINWA plans to charge a levy for all stored water (even if held behind a privately owned dam) and for ground water used for productive purposes. The new water management authorities plan to charge levies to pay for their operations. Unresolved tensions and contradictions regarding water pricing exist between central management and control as exemplified in ZINWA, on the one hand, and the decentralization and local-decision making structures embodied in Catchment and Sub-Catchment Councils on the other.⁹ The Mazowe Catchment Council has been particularly concerned about what role ZINWA will play, what its levy will be, and how it will articulate with the Catchment authorities. Other Catchment

⁸ See Derman and Ferguson 1999 for further discussion.

⁹ There were no broad-based consultations on the creation of ZINWA. The majority of the Board of Directors for ZINWA will be appointed by the Minister of Water Development and Rural Resources. In a concession to Catchment Councils, four members will be drawn from nominations submitted by the seven catchment councils. ZINWA will set the prices and levies for water while requiring that Catchment Councils collect them. How all of this will take place remains to be determined.

Councils show less concern. They see ZINWA as carrying out much of the work that would fall on them for which they have inadequate financing.¹⁰ Large-scale commercial farmers hold varying positions on pricing questions depending upon their source of water supply. Communal area farmers remain highly suspicious of pricing given a plethora of failed promises for delivery of water and water-related services over the years, and the fact that they traditionally have received little access to subsidized water held government dams.

While the language used to generate support for the water reform emphasizes equity, it is clear that the issues currently preoccupying the Catchment Councils and ZINWA have little to do with this concern or with ensuring that all Zimbabweans have access to water. This is evident in at least two ways.

First, water supplies for consumption and sanitation fall outside of the interests the Catchment Councils have articulated to date. As was expressed to us a member of the Mazowe Catchment Council, water for domestic use is not of great importance since it represents a very small percentage of the total volume. However, it is precisely this disjuncture between “primary” water and “productive” water, particularly the greater value attached to productive water, that is problematic and disturbing. The almost exclusive focus on water for irrigation and other “productive” uses at the Catchment Council meetings has largely silenced other discourses on water use and management expressed by women, poor farmers and urban residents. Because their water use is considered as primary (i.e. non-productive/insignificant), their interests and their authority in water management are thereby undermined.

The current fashionable emphasis on demand-side strategies and “productive uses” of water (related to the sustainable development discourses discussed above) is being extended to communal area boreholes to further commodify the resource and to generate revenues from its sale. All boreholes used for commercial purposes are to be metered, and payment is to be made to ZINWA. In many cases, however, the distinction between productive and primary use of boreholes is ambiguous at best. Here again, pricing and economics are set against, or take precedence over, public health and well-being. The linkages which appear so obvious are not made because of the legacies of racism, and the large gulf that separates how large-scale farmers and communal area farmers use and manage water.

When the Royal Netherlands Embassy provided funding for “microprojects” in the Mupfure Pilot Catchment - projects that actually addressed the needs of the majority of farmers - they discovered that what communal area residents most wanted were functioning boreholes.¹¹ In the participatory research appraisals carried out by the Center for Applied Social Sciences (University of Zimbabwe), boreholes were identified as the most important sources of drinking water, and an important source of water for small-scale gardens in communal and

¹⁰ There is not space here to detail the extensive discussions and debates that have characterized the formation of these new organizations. This summary however, is based both upon our own field notes and those of Mr. Chikozho and Mr. Vombo, Research Assistants with the Centre for Applied Social Sciences, University of Zimbabwe. Let one example suffice. At a meeting of a subcatchment within the Mazowe Catchment the items on the agenda were: ground water regulations (which would require metering and paying), the allocation system and water pricing. While these issues are sure to affect primary users, they do not reflect their priority interests.

¹¹ The government of the Netherlands is the major donor for the Mupfure Pilot Catchment Project. It certainly is possible had the funding been greater farmers would have opted for larger-scale irrigation based projects. However, the priority remains, in our view, for boreholes.

resettlement areas. They were also the source of deep grievances against the government as promises made for their construction and maintenance frequently were broken.¹²

To date, the question of how to meet the water and sanitation needs of poor urban and rural residents has received scant attention from Councils. Ironically, these concerns have been labeled a “development” rather than a management concern and thus are considered to fall outside of the scope of Catchment authority. In other words, it appears that many Councils are defining themselves as managers, not developers. At the same time, the Department of Water Development (DWD), which previously had the mandate to provide water and sanitation services to rural and urban areas, is being downsized. Most of its staff is being retrenched or shifted to ZINWA. Thus, it would appear that the right to development, at least for the poor, is finding little place in Zimbabwe’s reforms.¹³

Second, the focus on social equity found in the new legislation and in the policy document is also being challenged in practice. The representatives of the communal area residents and Rural District Councils on the Catchment Councils have begun to question the nature of their representation. They especially challenge the notion that their interests - which are the interests of the majority of water users - can be adequately expressed by a single representative from each constituency. The Representative of the communal area farmers on the Mupfure Catchment Council observed that there are usually six to eight communal areas in a Catchment, and that no one representative could possibly speak for them all.¹⁴ Catchment and Sub-Catchment Councils do have flexibility to choose other forms of representation as the Mazowe Catchment Council has done. In this catchment, any water user may be elected to the council. He or she does not have to represent sectoral interests. This course of action may be adopted by other Catchment Councils in the future.¹⁵

Finally, women are conspicuously, but not surprisingly, absent from all levels of Catchment administration even though they are often those who manage boreholes, irrigated gardens and are just as engaged in agriculture as men in communal areas (Derman 1998).

¹² Chikozho, Koznanayi and Mpofu 1999 and Vombo and Hwena 1999.

¹³ This is not to imply that the DWD has performed this function well. Water development has been divided between DWD, the District Development Fund which has been deployed to drill and maintain boreholes, Agritex responsible for irrigation and water management for agriculture, and the Ministry of Mines, Environment and Tourism tasked with conserving watersheds through its Natural Resources Board. This is not an exhaustive list, but suggests the complexity involved in developing practices and discourses among many ministries and departments.

¹⁴ There is the further complication that most communal area farmers are not members of formal organizations in contrast to the commercial farmers who are represented by the Commercial Farmers Union. Rural District Councils are part of government, almost all Councilors are members of the ruling political party and men and tend to be relatively privileged members of their communities. Who they represent is an important question within the context of Catchment Councils.

¹⁵ In the Mazowe system it is assumed that everyone is a stakeholder since they use water. Water User Boards send their Chairs and Vice-Chairs to Sub-Catchment Council meetings (although everyone is welcome) and Sub-Catchments send their Chairs and Vice-Chairs to the Catchment Council. If sectors are missing then they are invited to participate. Mazowe has opted to be open and encourage as many people as possible come to meetings, including representatives from government departments. The question of a third tier of management is also significant. Would water organizations function better if they incorporated smaller geographic areas? Most agree that this would be the case. The issue then becomes how to pay for these lower level administrative structures. Currently participants’ time is not compensated, but they are paid transport and food allowances.

IV. CONCLUSIONS

Do these reforms hold potential for more profound change, including better representation of women and poor water users, and a shift in emphasis from property rights, production and pricing to a concern with water as a human right? Although to date the focus has been topics of immediate interest to commercial farmers, the very fact that representatives of different user groups have been involved in the decision-making process is having an impact in unexpected ways. Representation has been broadened beyond what it was on River Boards. For example, a highly educated Chief now chairs one new Catchment Council, while a black commercial farmer and vice-President of the Campfire Association heads another. In one instance, the largest water user of the area has become Chairman of his Catchment Council, but this may actually produce more change since he is so unsympathetic to communal area residents. Donors will also continue to press for women's inclusion and participation. The Catchment Councils cannot fulfill their functions without communal area participation. Will such changes be sufficient to shift the discourse from water rights to rights to water? Initially, probably not, but the discourse on basic human rights to water is potentially a powerful one in the longer term. If political changes continue as they have been, a rights discourse could well become part of the ongoing process of water reform as movements for human rights and environmental justice in Southern Africa gather momentum.

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